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NO. 2268 P. 15

NOV 25 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application No. 09/100,100

Applicant: James E. Ross, Jr. et al.

Filed: June 19, 1998

TC/AU: 3628

Examiner: Poinvil, Frantzy

Docket No.: 204920

Customer No.: 23460

Mail Stop  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF DR. JAMES ROSS IN SUPPORT OF  
A SUPPLEMENTARY INFORMATION DISCLOSURE STATEMENT**

I, the undersigned, hereby declare the following:

1. I am one of the named inventors of the above-captioned patent application.
2. This declaration is intended to supplement the information provided in the Declaration of the Inventors submitted to the USPTO on December 18, 2000, and the Declaration of Frank T. Carroll, Jr. submitted to the USPTO on June 29, 2001, relating to the experimental testing of a system incorporating the claimed invention at Southwest General Hospital during the summer of 1995.
3. I have personal knowledge regarding circumstances and facts concerning efforts to obtain the consent of Southwest General Hospital to volunteer its hospital emergency room as a test site for a software system (TeleMed) that incorporated the claimed invention. In particular, I have personal knowledge of the circumstances associated with the Beta Test and License Agreement (hereinafter Agreement – submitted herewith) signed by

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me on November 17, 1994, and then forwarded for execution by Southwest General Hospital's CEO.

4. I could not simulate the environment and the knowledge of the intended users of my invention on my own. My intention in pursuing/entering the Agreement with Southwest General Hospital was experimental in nature – to verify that the invention, as embodied in the TeleMed system, could be carried out in its intended environment. By entering into the Agreement and having the prototype/experimental Telemed system operated at Southwest General Hospital, I hoped to confirm that the automatic transcription feature (the subject of the recited invention), as well as other novel features of the Telemed system, could be carried out in a medical services environment. Prior to installing the Telemed system at Southwest General Hospital pursuant to the Beta Test and License Agreement, the invention had not been operated in such an environment.

5. Pursuant to the Agreement (see, Exhibit A of the Agreement) provided in the Supplemental IDS submitted herewith, my company provided at no cost to Southwest General Hospital, all the software, hardware and training needed to carry out the beta testing of the Telemed system.

6. Pursuant to Section 4 of the Agreement, Southwest General Hospital provided feedback in the form of weekly meetings to prepare outlines of Beta Test activities and to discuss the test results. Southwest General Hospital was also required to collect test data, comments on usability and bug reports. Copies of the forms used to report comments and errors uncovered during Beta testing are attached hereto as Attachment A. There were literally hundreds of such reports rendered by Southwest General Hospital pursuant to the agreement.

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7. The Telemed software was not yet ready to be tested at the time the Agreement was executed in November 1994. As such there are no delivery schedules listed in the agreement. As stated in Mr. Carroll's previously submitted declaration, the Telemed system was not operated at Southwest General Hospital until mid-July of 1995.

8. There were no price lists or price quotations associated with the Agreement.

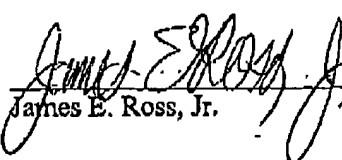
9. It has been my understanding, throughout the period of pursuing patents on the inventions disclosed in the present application as well as any related applications, that the activities related to pursuing and obtaining a beta test agreement with Southwest General Hospital, which occurred more than one year prior to the filing date of the parent of this divisional application (filed on July 6, 1996) did not affect the patentability of the inventions, and thus the activities relating to pursuing and entering the Agreement (described herein above) are not material to examination of the present application.

10. In view of a Federal Circuit opinion (see, *GFI Inc. v. Franklin Corp.*, 265 F.3d 1268, 60 U.S.P.Q.2d 1141 (Fed.Cir. 2001)), that encourages placing the decision-making power/responsibility regarding materiality of a reference within the hands of the U.S. Patent and Trademark Office, I am submitting a copy of the Agreement as well as this declaration of facts relating to the Agreement with Southwest General Hospital.

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11. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: November 25, 2005

  
James E. Ross, Jr.

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## ATTACHMENT A



## Emergency Department Patient Documentation Systems

## Suggestion

Name \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/95 Time: \_\_\_\_:

**Section Suggestion Applies To (if applicable)**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Patient Tracking       | <input type="checkbox"/> Test Requests           | <input type="checkbox"/> Historical Consultations |
| <input type="checkbox"/> Reports                | <input type="checkbox"/> Diagnostic Procedures   | <input type="checkbox"/> Historical Referrals     |
| <input type="checkbox"/> Triage                 | <input type="checkbox"/> Therapeutics            | <input type="checkbox"/> Historical Dr. Interval  |
| <input type="checkbox"/> Complaint              | <input type="checkbox"/> Medications in ER       | <input type="checkbox"/> Phone Directory          |
| <input type="checkbox"/> Differential Diagnosis | <input type="checkbox"/> Prescriptions           | <input type="checkbox"/> Department Clerk         |
| <input type="checkbox"/> Diagnosis              | <input type="checkbox"/> Consultations           | <input type="checkbox"/> Find Previous Visits     |
| <input type="checkbox"/> Nursing Assessment     | <input type="checkbox"/> Referrals               | <input type="checkbox"/> Restore Current Visit    |
| <input type="checkbox"/> Review of Systems      | <input type="checkbox"/> Print Medical Record    | <input type="checkbox"/> Patient Instructions     |
| <input type="checkbox"/> Allergies              | <input type="checkbox"/> Summary                 | <input type="checkbox"/> Work Excuse              |
| <input type="checkbox"/> Past Medical History   | <input type="checkbox"/> Historical Vital Signs  | <input type="checkbox"/> School Excuse            |
| <input type="checkbox"/> Family History         | <input type="checkbox"/> Historical Nurse Notes  | <input type="checkbox"/> Patient Questionnaire    |
| <input type="checkbox"/> Social History         | <input type="checkbox"/> Lab Results             | <input type="checkbox"/> Patient Info             |
| <input type="checkbox"/> Vital Signs            | <input type="checkbox"/> EKG Results             | <input type="checkbox"/> Employer/Relative        |
| <input type="checkbox"/> Nurse Notes            | <input type="checkbox"/> Dictated Transcripts    | <input type="checkbox"/> Admission/Discharge      |
| <input type="checkbox"/> Lab Requests           | <input type="checkbox"/> Historical Therapeutics | <input type="checkbox"/> Other _____              |
| <input type="checkbox"/> Radiology Requests     | <input type="checkbox"/> Historical Pres. Meds   |   |

**Suggestion**

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Implemented	NMO	For V2.0	Comment
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Emergency Department Patient Documentation Systems

## Bug Report

Terminal # \_\_\_\_\_

Pat. Name \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ /95 Time: \_\_\_\_\_

**Section Bug Occurred In**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Patient Tracking       | <input type="checkbox"/> Diagnostic Procedures    | <input type="checkbox"/> Historical Referrals    |
| <input type="checkbox"/> Reports                | <input type="checkbox"/> Therapeutics             | <input type="checkbox"/> Historical Dr. Interval |
| <input type="checkbox"/> Triage                 | <input type="checkbox"/> Medications in ER        | <input type="checkbox"/> Phone Directory         |
| <input type="checkbox"/> Complaint              | <input type="checkbox"/> Prescriptions            | <input type="checkbox"/> Department Clerk        |
| <input type="checkbox"/> Differential Diagnosis | <input type="checkbox"/> Consultations            | <input type="checkbox"/> Find Previous Visits    |
| <input type="checkbox"/> Diagnosis              | <input type="checkbox"/> Referrals                | <input type="checkbox"/> Restore Current Visit   |
| <input type="checkbox"/> Review of Systems      | <input type="checkbox"/> Print Medical Record     | <input type="checkbox"/> Patient Instructions    |
| <input type="checkbox"/> Allergies              | <input type="checkbox"/> Summary                  | <input type="checkbox"/> Work Excuse             |
| <input type="checkbox"/> Past Medical History   | <input type="checkbox"/> Historical Vital Signs   | <input type="checkbox"/> School Excuse           |
| <input type="checkbox"/> Family History         | <input type="checkbox"/> Historical Nurse Notes   | <input type="checkbox"/> Patient Questionnaire   |
| <input type="checkbox"/> Social History         | <input type="checkbox"/> Lab Results              | <input type="checkbox"/> Patient Info            |
| <input type="checkbox"/> Vital Signs            | <input type="checkbox"/> EKG Results              | <input type="checkbox"/> Employer/Relative       |
| <input type="checkbox"/> Nurse Notes            | <input type="checkbox"/> Dictated Transcripts     | <input type="checkbox"/> Admission/Discharge     |
| <input type="checkbox"/> Lab Requests           | <input type="checkbox"/> Historical Therapeutics  | <input type="checkbox"/> Other _____             |
| <input type="checkbox"/> Radiology Requests     | <input type="checkbox"/> Historical Pres. Meds    |  |
| <input type="checkbox"/> Test Requests          | <input type="checkbox"/> Historical Consultations |  |

Last Screen Number When Bug Occurred \_\_\_\_\_

Error Message Displayed On Screen When Bug Occurred \_\_\_\_\_

What Were You Entering Just Before Bug Occurred (As Much Detail As Possible)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_What Happened When The Bug Occurred  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Resolved	NMO	Intermittent	Comment